



U.S. Department of Justice

Environment and Natural Resources Division



LJG:LJG

90-7-2-532

Environmental Defense Section
P.O. Box 23986
Washington, DC 20026-3986

Telephone (202) 514-0165
Facsimile (202) 616-2426

July 24, 1997

VIA FEDERAL EXPRESS

Stephen R. Ludwig
Clerk, United States District Court
Northern District of Indiana
101 Federal Building
507 South State Street
Hammond, IN 46320
(219) 937-5235

Re: Gary Development Company, Inc. v. U.S. Environmental
Protection Agency, Civil Action No. 2:96CV489-RL

Dear Mr. Ludwig:

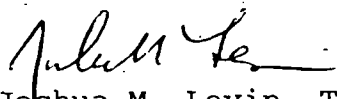
Enclosed for filing, and for presentment to Judge Lozano, please find two originals and one copy of the parties' Joint Motion for Expedited Ruling on Proposed Consent Decree. We were advised to file this motion during a July 22 telephone call with your office. Please return the copy to our office in the envelope enclosed.

Please contact me if anything is required for timely filing. I appreciate your ongoing courtesies.

Sincerely,

Assistant Attorney General
Environment & Natural Resources Divi

By:


Joshua M. Levin, Trial Attorney
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-4198

Enclosure

cc: Counsel of Record

Resource Conservation and Recovery Act ("RCRA"), EPA would release its existing claims against Gary Development under its RCRA May 30, 1986 Complaint and Compliance Order, in exchange for a payment of \$126,000.00. Said payment would satisfy an administrative penalty issued by EPA against Gary Development and would also allow Gary Development to contribute towards certain remedial activities being performed at the landfill which the company owns at 479 North Cline Avenue, in Gary, Indiana.

2. On July 22, 1997, the undersigned counsel discussed the status of the court's review of the proposed Consent Decree. In this discussion, counsel for EPA was advised that Gary Development's assets are being steadily depleted, and that the company's ability to pay EPA in accordance with the proposed Consent Decree may be jeopardized if the Consent Decree is not entered promptly.

3. Throughout the parties' settlement discussions in this matter, Gary Development has represented to EPA that it is unable to fully comply with requirements imposed by EPA in its RCRA compliance order, due to financial hardships which Gary Development now faces. Based upon its own review of Gary Development's finances, EPA has reason to believe that Gary Development's characterization of its financial condition is

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

Defendant.

Case No. 2:96CV489 RL

CONSENT DECREE

I. INTRODUCTION

WHEREAS, Plaintiff, Gary Development Company, Inc. ("Gary Development") owns certain real property at 479 North Cline Avenue in Lake County, Gary, Indiana, hereinafter referred to as the "Site;"

WHEREAS, Gary Development owns and operates a landfill on said above property;

WHEREAS, Gary Development officially ceased operations and stopped accepting waste on August 31, 1989;

WHEREAS, on May 30, 1986, Region 5 of the United States Environmental Protection Agency ("EPA") issued a Complaint and Compliance Order against Gary Development, alleging that the company had unlawfully accepted hazardous waste for disposal at the landfill which had neither achieved interim status under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C §§ 6901-6992k, nor obtained a RCRA permit;

WHEREAS, the Indiana State Board of Health, the predecessor to the Indiana Department of Environmental Management, referred the alleged violations asserted in the May 30, 1986 Complaint and Compliance Order to Region 5 of EPA for enforcement;

WHEREAS, on April 8, 1996, and after a hearing on the matter, the administrative law judge issued a Decision and Order in favor of EPA ("April 8, 1996 Decision and Order");

WHEREAS, on June 21, 1996, Gary Development appealed the April 8, 1996 Decision and Order to EPA's Environmental

doing to settle, discontinue, and end the present action pending between them on the terms and conditions set forth below.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. Gary Development and the United States agree that the United States District Court for the Northern District of Indiana has subject matter jurisdiction over the matters alleged in this civil action and this Consent Decree. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. The Parties to this Consent Decree are Plaintiff, Gary Development Company, Inc. and Defendant, the United States of America, on behalf of its agency, the United States Environmental Protection Agency ("EPA").

the case and projected costs of litigation.

6. Nothing in the Consent Decree shall be construed as an admission or acknowledgment of liability or responsibility whatsoever on the part of any party hereto or, their past and present agents, its divisions, subsidiaries, officers, directors, representatives and employees, each of whom expressly denies all liability, responsibility, or wrongdoing of any nature.
7. This Consent Decree constitutes the entire settlement between the Parties.

VI. OBLIGATIONS OF GARY DEVELOPMENT

8. Gary Development shall pay \$86,000 as a civil penalty within fifteen (15) days after the effective date of this Consent Decree.
9. The payment in Paragraph 8 shall be made by certified check, payable to the "Treasurer, United States of America." The check shall be mailed to:

U.S. EPA
Region V
Regional Finance Office
P.O. Box 70753
Chicago, Illinois 60673.

The face of the check shall be clearly marked with "Gary Development Company, Inc." and "Docket No.: RCRA V-W-86-R-45." Notice that payment has been mailed to the United States, including copies of the payment and transmittal of payment, shall be

Trust account. Gary Development will pay an additional \$20,000 into the GDCLF Trust account fifteen (15) days thereafter, or a total of forty-five (45) days after the effective date of this Consent Decree.

14. The GDCLF Trust shall be irrevocable, and Gary Development shall not retain any interest whatsoever in the corpus or proceeds of the trust.
15. The Parties agree that all monies in the GDCLF Trust shall be used solely for the purposes of performing a landfill closure and post-closure care activities in accordance with 329 IAC 3.1-10-1 and 3.1-10-2, incorporating by reference 40 C.F.R. Subpart G and section 265.310, and any amendments that may be made to these sections of the Indiana Administrative Code, a groundwater quality assessment program in accordance with 329 IAC 3.1-10-1 and 3.1-10-2, incorporating by reference 40 C.F.R. Subpart F, and any amendments that may be made to these sections of the Indiana Administrative Code, remediation of contamination and/or the prevention of the release of hazardous substances at the Site.
16. The parties agree that the terms of settlement reflected in this Consent Decree have been limited because of Gary Development's financial inability

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C29-A
Chicago, Illinois 60604-3590

17. Gary Development shall provide EPA with a copy of its federal and state tax returns on an annual basis as long as the company is in existence. Gary Development shall provide a copy of the tax returns within fifteen (15) days of filing the originals with the Internal Revenue Service and/or the state's Department of Treasury.
18. Gary Development shall bear its own costs and attorneys' fees for all matters resolved by this Consent Decree.

VII. OBLIGATIONS OF EPA

19. Except as provided for in Section X (Reopener), EPA shall not seek administrative or civil judicial enforcement of the injunctive relief contained in its May 30, 1986 Complaint and Compliance Order issued to Gary Development.
20. Upon payment as provided in Paragraph 8, EPA agrees that the penalty payment required by the April 8, 1996 Decision and Order is fully satisfied.
21. Upon payment as provided in Paragraph 8, EPA ~~waives its right to initiate a civil judicial~~ action to seek any penalties resulting from Gary

of any liability on the part of either Gary Development or EPA or of the merit or lack of merit of any claims or defenses made by Gary Development or EPA. Nor shall this Consent Decree, or any negotiations or proceedings conducted herewith, be offered or received in evidence or used in any proceedings against either Gary Development or EPA for the purpose of establishing proof of any fact including but not limited to the environmental conditions of the Site, excepting proof of the existence, validity and enforceability of this Consent Decree or its terms.

26. The agreements of EPA in paragraphs 19-22 do not pertain to any matters other than those expressly provided therein. As to all other matters, this Consent Decree is without prejudice to, and the United States expressly reserves, all claims or rights relating to the release, threat of release or presence of hazardous substances, toxic substances, contaminants, pollutants or wastes at the Site. This reservation includes, but is not limited to, the claims or rights of EPA and any Federal natural resource trustee under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C29-A
Chicago, Illinois 60604-3590

Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code D-8J
Chicago, Illinois 60604-3590

29. Within 30 days of the completion of the sale of the personal property and/or equipment owned by Gary Development and sold for the purposes of satisfying the terms of this Consent Decree set forth in Paragraph 13, Gary Development shall provide EPA with an accounting of the net proceeds from the sale(s). Such accounting shall be sent to:

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C29-A
Chicago, Illinois 60604-3590

Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code D-8J
Chicago, Illinois 60604-3590

30. If the Consent Decree is reopened in accordance with Paragraph 27 and the Parties are unable to

Branch of the Water Division of Region 5 of EPA of this Consent Decree.


35. All Parties agree that this Consent Decree is entered into by them pursuant to and with the assistance of competent legal advice. They further acknowledge that they have read and fully understand each and every provision of this Consent Decree and the Attachments hereto.

36. Each party hereto warrants and represents to the others that its representative who is executing this Consent Decree has the authority to bind its principal to the terms and conditions contained in this Consent Decree.

XII. INTENT TO CONTRACT AND BIND SUCCESSORS


37. This Consent Decree constitutes the final and entire understanding and agreement of the Parties with respect to its subject matter, and no other statements, promises, terms, representations or inducements, oral or written, by either party, shall be binding or valid.

38. This Consent Decree shall be binding upon the Parties hereto, and upon their successors and assigns, any parent or subsidiary or affiliated companies, shareholders, officers, directors, representatives and trustees.



Dated: 7-9-97

WARREN D. KREBS, ESQ.
Dutton & Overman, P.C.
710 Century Building
36 South Pennsylvania Street
Indianapolis, IN 46204-2963



Dated: 7-3-97

William Nanini
President and Director
Gary Development Company, Inc.

ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

Lois A. Schiffer
Assistant Attorney General
Environment & Natural Resources Division



Dated: 6/30/97

JOSHUA LEVIN
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-4198

OF COUNSEL:

ARLENE R. HAAS
Assistant Regional Counsel
Region V
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Mail Code C-29A
Chicago, IL 60604-3590

ATTACHMENT A

TRUST AGREEMENT FOR GARY DEVELOPMENT COMPANY LANDFILL FUND

This Trust Agreement is made among Gary Development Company, Inc. ("Gary Development") and National City Bank of Indiana, as Trustee of the Trust, which shall also be known as the Gary Development Company Landfill Fund Trust ("GDCLF Trust"), for the benefit of the Indiana Department of Environmental Management ("IDEM"), the Beneficiary.

WHEREAS, Gary Development owns and operates a landfill at 479 North Cline Avenue in Lake County, Gary, Indiana (the "Site");

WHEREAS, Gary Development officially ceased operations and stopped accepting waste on August 31, 1989;

WHEREAS, on May 30, 1986, Region 5 of the United States Environmental Protection Agency ("EPA") issued a Complaint and Compliance Order against Gary Development, alleging that the company had unlawfully accepted hazardous waste for disposal at the landfill which had neither achieved interim status under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k, nor obtained a RCRA permit;

WHEREAS, the Indiana State Board of Health, the predecessor to the IDEM, referred the alleged violations asserted in the May 30, 1986 Complaint and Compliance Order to EPA, Region 5 for enforcement;

WHEREAS, on April 8, 1996, the administrative law judge issued a Decision and Order in favor of EPA ("April 8, 1996 Decision and Order");

WHEREAS, on June 21, 1996, Gary Development appealed the Decision and Order to EPA's Environmental Appeals Board ("EAB");

WHEREAS, on August 16, 1996, the EAB dismissed the appeal as untimely;

WHEREAS, on September 16, 1996, Gary Development commenced a civil action in the United States District Court for the Northern District of Indiana captioned Gary Development Company, Inc. v. United States Environmental Protection Agency, Case No. 2:96CV489 RL ("Civil Action");

WHEREAS, Gary Development alleges in the Civil Action that the EAB wrongfully dismissed its appeal as untimely and requested the Court to reverse the August 16, 1996 decision of the EAB and remand the case for a new hearing;

Section 1.05. Transfer of Assets to Trust.

(a) Gary Development hereby absolutely and irrevocably assigns, conveys and transfers to the GDCLF Trust, for the benefit of the Beneficiary, \$40,000 paid pursuant to paragraph 13 of the Consent Decree. Simultaneous with the creation of the GDCLF Trust, Gary Development shall pay \$20,000 into the GDCLF Trust account. Gary Development will pay an additional \$20,000 into the GDCLF Trust account fifteen (15) days thereafter.

(b) The \$40,000 paid pursuant to the Consent Decree, plus any other funds, tangibles, intangibles, real or personal property paid or transferred into the GDCLF Trust from any other source, including any proceeds, revenues, or interest collected by or paid into the GDCLF Trust, shall collectively be referred to herein as the "Trust Assets."

(c) Gary Development has funded the GDCLF Trust pursuant to a requirement in the Consent Decree. With the exception of the obligation to establish and fund the GDCLF Trust as provided herein and in the Consent Decree, Gary Development shall have no rights, duties, obligations, liabilities, or fiduciary responsibilities of any kind in any way connected or related to the GDCLF Trust, or with management of the GDCLF Trust, the use of funds held in the GDCLF Trust, property acquired with GDCLF Trust funds, or activities, work, or projects funded by the GDCLF Trust. This Trust is irrevocable and Gary Development retains no interest whatsoever in the corpus or proceeds of this Trust.

Section 1.06. Acceptance of Trust. The GDCLF Trust Trustee hereby accepts the Trust imposed upon it by this Trust Agreement and agrees to observe and perform that Trust, upon and subject to the terms and conditions set forth herein, in a fiduciary capacity for the benefit of the Beneficiary.

Section 1.07. The Trust Assets. The GDCLF Trust Trustee shall hold all of the Trust Assets in trust, to be administered and disposed of by the GDCLF Trust Trustee pursuant to the terms of this Trust Agreement.

Section 1.08. Purpose of Trust. The GDCLF Trust is organized for the purpose of performing landfill closure and post-closure care activities in accordance with 329 I.A.C. 3.1-10-1 & 3.1-10-2, incorporating by reference 40 C.F.R. Subpart G & § 265.310, and any amendments that may be made to these sections of the Indiana Administrative Code; a groundwater quality assessment program in accordance with 329 I.A.C. 3.1-10-1 & 3.1-10-2, incorporating by reference 40 C.F.R. Subpart F, and any amendments that may be made to these sections of the Indiana Administrative Code; ~~remediation of contamination and/or the prevention of the release of hazardous substances at the Site.~~

Section 1.09. Intention to Create Trust. The parties to this Trust Agreement intend to create a trust and a trust relationship with the terms and conditions hereof and the terms and conditions of Indiana Law. Nothing set forth herein or in any provision of law shall be deemed

ARTICLE III FUNDS, PAYMENTS AND INVESTMENTS

Section 3.01. Investment Guidelines. Unless directed otherwise by the Commissioner of IDEM, the Trustee shall deposit or invest all Trust Assets in (a) securities or other obligations of a federal or state government, (b) time or demand deposits to the extent insured by an agency of federal or state government, or (c) mutual funds comprised solely of obligations of state or federal governments; except that the Trustee is authorized to hold uninvested cash awaiting investment or distribution for a reasonable time.

Section 3.02. Appointment of Custodian. The Trustee may, with the approval of the Commissioner of IDEM, appoint a financial institution to serve as the Custodian of the Trust Assets. In appointing a Custodian, the Trustee shall solicit from financial institutions proposals setting forth all fees, charges, and other costs for the Custodian's proposed services; and the Trustee, prior to entering into a written contract for the Custodian's services, obtain the approval of the Commissioner of IDEM as to the terms and conditions of the proposed written agreement with the Custodian.

Section 3.03. Trust Account and Segregated Account. The Trustee shall maintain the \$40,000 received from Gary Development pursuant to the Consent Decree, as well as any income generated from the \$40,000, in a Segregated Account held separately from moneys received from any other source, and shall apply the money received from Gary Development pursuant to the Consent Decree solely for the purposes described in Section 1.08 of this Trust Agreement.

ARTICLE IV THE TRUSTEE

Section 4.01. No Duties Except as Specified in this Agreement or in Instructions. The Trustee shall not have any duty or obligation to take any action except as expressly provided by the terms of this Trust Agreement or in any directions given to the Trustee by the Commissioner of IDEM; and no implied duties or obligations shall be read into this Trust Agreement against Trustee.

Section 4.02. Standard of Care; Exculpation. The Trustee shall exercise the rights and powers vested in it by this Trust Agreement. Neither the Trustee nor any of the Trustee's respective shareholders, directors, officers, employees, affiliates, agents, advisors, contractors, successors or assigns shall be liable for any actions taken or omitted to be taken under or in connection with this Trust Agreement, except to the extent that they have acted with negligence, bad faith, misconduct or willful disregard of the provisions of this Trust Agreement, or in breach of the fiduciary duties arising from or relating to this Trust Agreement.

Section 4.03. Indemnification. Except as provided in Section 4.02, above the GDCLF Trust shall be liable as primary obligor for, and shall defend and indemnify the Trustee and its officers, employees and agents from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees, incurred by them in connection with the performance of their duties as such officers, employees or agents.

Section 5.03. No Legal Title in Trust by Beneficiary or Gary Development. Neither the Beneficiary in its capacity as Beneficiary nor Gary Development shall have legal title to any part of the Trust Assets.

Section 5.04. Notices and Directions. All notices, directions, requests and other communications to be made to the Commissioner of IDEM shall be sent in writing. All notices to be made to the Trustee by the Commissioner of IDEM shall also be made in writing.

Section 5.05. Severability. If any provision of this Trust Agreement, other than Section 1.08, is held to be illegal, invalid or unenforceable, all other provisions of the Trust Agreement remain in full force and effect, and the Trust Agreement shall be deemed amended to the extent necessary to make the provision enforceable while preserving the provision's intent or, if that is not possible, by substituting another provision that is enforceable and achieves the same objectives and economic result.

Section 5.06. Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by a party hereto shall bind the successors and assigns of any party hereto.

Section 5.07. Termination of Trust. The GDCLF Trust and this Trust Agreement shall terminate when all funds subject to the Trust have been disbursed and the Commissioner of IDEM authorizes the Trustee in writing to terminate the GDCLF Trust.

ON BEHALF OF GARY DEVELOPMENT COMPANY:

STEPHEN B. CHERRY, ESQ.
LISA MCKINNEY GOLDNER, ESQ.
Bose McKinney & Evans
135 North Pennsylvania Street
Suite 2700
Indianapolis, IN 46202

Dated: _____

WARREN D. KREBS, ESQ.
Dutton & Overman, P.C.
710 Century Building
36 South Pennsylvania Street
Indianapolis, IN 46204

Dated: _____

ATTORNEYS FOR GARY DEVELOPMENT COMPANY, INC.

WILLIAM NANINI
President and Director
Gary Development Company, Inc.

Dated: _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

GARY DEVELOPMENT COMPANY,
INC.,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Case No. 2:96CV489 RL

DECLARATION OF WILLIAM NANINI IN SUPPORT OF
CONSENT DECREE BETWEEN GARY DEVELOPMENT COMPANY, INC.
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I, William Nanini, pursuant to 28 U.S.C. § 1746, declare and state the following:

1. I am President, Director and a shareholder of Gary Development Company, Inc. ("Gary Development"). Gary Development is the plaintiff in the above-captioned and numbered case. I am fully authorized to submit this declaration on behalf of Gary Development.

2. I hereby state that Gary Development is not able to comply with the requirements set forth in EPA's May 30, 1986 Complaint and Compliance Order, beyond the compliance provided for in the Consent Decree agreed upon by Gary Development and EPA.

3. In connection with the parties' settlement discussions,

Development and EPA.

7. Except insofar as its counsel has otherwise disclosed to the United States in conjunction with the entry of the Consent Decree in this matter, at no time since EPA's issuance of the May 30, 1986 Complaint and Compliance Order has Gary Development transferred assets to its directors, officers, shareholders, general partners, persons in control of Gary Development, or relatives of such persons; nor has Gary Development transferred assets to any subsidiaries, affiliated entities, parent corporations, or partnerships in which it is a general partner.

8. I acknowledge that, in the event Gary Development, including its counsel and/or its accountants, has provided EPA with information relevant to its financial condition which is false in any material respect, or in the event Gary Development has failed to provide all necessary and relevant information to EPA concerning Gary Development's ability to satisfy the terms of the Decision and Order, EPA's obligations under the settlement shall be nullified and EPA shall be free to pursue any and all claims available to it under law, including any and all claims arising out of Gary Development's satisfaction of the terms of the Decision and Order.

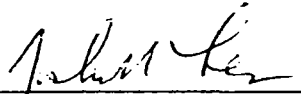
9. The statements set forth in paragraphs 5-8 above are based upon the information provided and representations made on financial reports by my accountant, Stephen E. Koons.

I affirm under penalty of perjury and upon personal

CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 1997, I sent a copy of the "Joint Motion for Expedited Review of Proposed Consent Decree" by First-Class Mail, to the following counsel of record:

Steven B. Cherry, Esq.
Lisa McKinney Goldner
Bose McKinney & Evans
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, IN 46204



Joshua M. Levin

LAW OFFICES OF
TERRY K. HIESTAND
P. O. BOX 555
CHESTERTON, INDIANA 46304

TERRY K. HIESTAND
GREGORY T. BABCOCK

117 BROADWAY
219/926-2188

May 28, 1982

Mr. William Miner
Chief of Technical Permit & Compliance Section
United States Environmental Protection Agency
Region V
111 West Jackson Street
Chicago, Illinois 60604

RE: Gary Development Company, Inc., Gary, Indiana
U.S.E.P.A. #IND-077005916
Indiana State Permit #45-2

Dear Mr. Miner:

Please be advised that I represent the above corporation, which operates a permitted land fill at 479 North Cline Avenue, in Gary, Indiana. Mr. Larry Hagen, who operates the land fill on behalf of the corporation, has told me of his conversation with you of some four or five weeks ago, wherein you promised to review the corporation's file to determine why it had been deleted from the computer as a permitted site, with the potential of handling hazardous materials. As I understand it from Mr. Hagen, the problem arose when his initial one-page notification form which told of the corporation's interest in being a permitted site was mis-filed. It appears to me there would be no question about the receipt of the form, as I understand it was a prerequisite to the issuance of an identification number, which the corporation has had for some time.

The whole SNAFU of not being listed in the computer has caused my client untold problems. Not only has he not received important and necessary mailings concerning the implementation of new rules and regulations with regard to the handling of hazardous materials, he has also failed to receive important mailings from the State of Indiana with regard to the implementation of new rules and regulations promulgated by the State. Mr. Hagen and I are very anxious to sit down with you and review the whole matter of the corporation's status with your agency, prior to June 18, 1982, when we will be reviewing with the Environmental Management Board of the State of Indiana the various conditions which should be attached to the renewal of the corporation's operating permit, and the approval of an amendment to the construction plans.

Continued.....

Mr. William Miner
United States Environmental Protection Agency
RE: Gary Development Co., Inc.
May 28, 1982

Page Two

Won't you please gather all of the information that you can find pertinent to this file and call me to set up a time when it would be convenient for Mr. Hagen and I to speak with you, or a member of your staff. If I can be of any assistance to you in further identifying this file or providing needed information, please do not hesitate to contact me.

Very truly yours,

LAW OFFICES OF TERRY K. HIESTAND

A handwritten signature in cursive script that reads "Terry K. Hiestand". To the right of the signature is a small, stylized monogram or set of initials, possibly "JEJ".

Terry K. Hiestand
Attorney at Law

TKH/jej

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dictated, but not read.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

GARY DEVELOPMENT COMPANY,
INC.,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Case No. 2:96CV489 RL

DECLARATION OF WILLIAM NANINI IN SUPPORT OF
CONSENT DECREE BETWEEN GARY DEVELOPMENT COMPANY, INC.
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I, William Nanini, pursuant to 28 U.S.C. § 1746, declare and state the following:

1. I am President, Director and a shareholder of Gary Development Company, Inc. ("Gary Development"). Gary Development is the plaintiff in the above-captioned and numbered case. I am fully authorized to submit this declaration on behalf of Gary Development.

2. I hereby state that Gary Development is not able to comply with the requirements set forth in EPA's May 30, 1986 Complaint and Compliance Order, beyond the compliance provided for in the Consent Decree agreed upon by Gary Development and EPA.

3. In connection with the parties' settlement discussions,

I acknowledge that the EPA has requested and obtained evidence of the financial condition of Gary Development. To the best of my knowledge, Gary Development has provided through its counsel and/or its accountants all requested necessary and relevant information to EPA, including financial documents concerning Gary Development's divisions, directors and employees, bearing on Gary Development's ability to comply with the requirements of EPA's May 30, 1986 Complaint and Compliance Order.

4. I understand that the EPA has agreed to certain terms of settlement, including the agreement that, assuming certain requirements of the settlement are fulfilled, EPA shall not seek administrative or civil judicial enforcement of the injunctive relief contained in its May 30, 1986 Complaint and Compliance Order. I further understand that EPA's agreement to the terms of settlement is expressly conditioned on the accuracy, truthfulness and completeness of the information provided to EPA by Gary Development through its counsel and/or its accountants, regarding Gary Development's financial condition.

5. To the best of my knowledge, the information provided to EPA regarding Gary Development's financial condition is accurate, truthful and complete.

6. I am aware of no plans, agreements or negotiations, beyond that previously disclosed to EPA, which would improve the financial condition of Gary Development and enable it to comply with the terms of the Decision and Order, beyond the compliance provided for in the Consent Decree agreed upon by Gary

Development and EPA.

7. Except insofar as its counsel has otherwise disclosed to the United States in conjunction with the entry of the Consent Decree in this matter, at no time since EPA's issuance of the May 30, 1986 Complaint and Compliance Order has Gary Development transferred assets to its directors, officers, shareholders, general partners, persons in control of Gary Development, or relatives of such persons; nor has Gary Development transferred assets to any subsidiaries, affiliated entities, parent corporations, or partnerships in which it is a general partner.

8. I acknowledge that, in the event Gary Development, including its counsel and/or its accountants, has provided EPA with information relevant to its financial condition which is false in any material respect, or in the event Gary Development has failed to provide all necessary and relevant information to EPA concerning Gary Development's ability to satisfy the terms of the Decision and Order, EPA's obligations under the settlement shall be nullified and EPA shall be free to pursue any and all claims available to it under law, including any and all claims arising out of Gary Development's satisfaction of the terms of the Decision and Order.

9. The statements set forth in paragraphs 5-8 above are based upon the information provided and representations made on financial reports by my accountant, Stephen E. Koons.

I affirm under penalty of perjury and upon personal

knowledge that the contents of the foregoing are true and correct.

Executed this 3RD day of June, 1997, at Tucson. AZ


WILLIAM NANINI